

IN RE: PETITION FOR ZONING VARIANCE
NW/4 of Riverside Road, 220' SW
of the c/l of Stillwater Road
(408 Riverside Road)
15th Election District
5th Councilmanic District
James D. Jones, et ux
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 90-238-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a variance to permit a side yard setback of 1 foot in lieu of the required 2.5 feet for an existing accessory structure, as more particularly described in Petitioner's Exhibit 1.

The Petitioners appeared, testified, and were represented by Michael E. Brown, Esquire. Appearing as Protestants in the matter were Linda and Arthur Emrick and Mary and Walter Maczda.

Testimony indicated that the subject property, known as 408 Riverside Road, consists of 0.682 acres more or less zoned R.5.5 and is improved with a single family dwelling and accessory building. Petitioners purchased the property approximately 18 years ago, at which time a utility shed was located along the east side property line where the accessory building now exists. Subsequently, and it is disputed as to whether it was the late 1970s or the early 1980s, Petitioners replaced the shed with the existing structure without building permits. In 1988, Petitioners had their property surveyed to determine the location of a 20' right-of-way easement to the front of the property. The survey revealed that the property line between 406 and 408 Riverside Road was not as originally thought, but is located as close as 1 foot from the existing utility shed. Upon learning of this finding, Mr. & Mrs. Maczda, the adjoining property owners, filed a complaint with the Zoning Office concerning Petitioners' shed being in violation of the zoning regulations. To correct the matter the Petitioners filed the instant Petition. Petitioners contend the granting of the variance will not result in any detriment to the health, safety, or general welfare of the surrounding community.

The Protestants testified in general opposition to the relief requested, indicating they have been experiencing water runoff problems as a result of there not being a proper gutter system on the subject building.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

It is clear from the testimony that if the variance is granted, such use as proposed would not be contrary to the spirit of the B.C.Z.R. and would not result in substantial detriment to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the variance requested should be granted.

THEFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 4th day of January, 1990 that the Petition for Zoning Variance to permit a side yard setback of 1 foot in lieu of the required 2.5 feet for an existing accessory building, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted:

- 1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.
- 2) Petitioners shall have a gutter system installed on the roof of the shed/garage. Said improvements shall be completed by no later than April 1, 1990.
- 3) Petitioner shall not allow or cause the accessory structure to be converted to a second dwelling unit and/or apartments. The shed/garage shall contain no living or sleeping quarters, and no kitchen or bathroom facilities. Further, the shed shall not be used for commercial purposes.

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Townson, Maryland 21204
(800) 887-5555
J. Robert Haines
Zoning Commissioner

January 4, 1990

Michael E. Brown, Esquire
4313 Edro Avenue
Baltimore, Maryland 21236

RE: PETITION FOR ZONING VARIANCE
NW/4 of Riverside Road, 270' SW of the c/l of Stillwater Road
(408 Riverside Road)
15th Election District - 5th Councilmanic District
James D. Jones, et ux - Petitioner
Case No. 90-238-A

Dear Mr. Brown:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Zoning Variance has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Badcliffe at 887-3391.

Very truly yours,

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

ANN:bjs

cc: Mr. & Mrs. Walter Maczda
406 Riverside Road, Baltimore, Md. 21221

Mr. & Mrs. Arthur Emrick
408 1/2 Riverside Road, Baltimore, Md. 21221

People's Counsel

File

ORDER RECEIVED FOR FILING

Date 1/4/90
By J. Robert Haines

ORDER RECEIVED FOR FILING

Date 1/4/90
By J. Robert Haines

ORDER RECEIVED FOR FILING

Date 1/4/90
By J. Robert Haines

ANN:bjs

- 3 -

PETITION FOR ZONING VARIANCE CRITICAL AREA

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 90-238-A

The undersigned, legal owner(s) of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 400.1 to permit a 1' side yard setback in the western yard for an accessory building in lieu of the minimum 2 1/2' and rear yard, respectively.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (Indicate hardship or practical difficulty)

Over 10 years ago Petitioners constructed a garage and relied on their neighbor's fence as the property line. Garage was constructed more than 3 feet from said fence and assumed property line. Recently Petitioners had their property surveyed. Now their neighbor is relying on this new survey and is moving the fence to the new survey line which is now within 2 1/2 feet of Petitioner's garage. To now after more than a decade make the Petitioners move their garage is an unreasonable hardship which is practically difficult for the Petitioners. Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Attorney for Petitioner:

Michael E. Brown

(Type or Print Name)

Signature

4313 Edro Avenue

Address

Baltimore, Maryland 21236

City and State

Attorney's Telephone No.: 665-3758

Legal Owner(s):

James D. Jones

(Type or Print Name)

Signature

Address

City and State

Attorney for Petitioner:

Michael E. Brown

(Type or Print Name)

Signature

4313 Edro Avenue

Address

Baltimore, Maryland 21236

City and State

Attorney's Telephone No.: 665-3758

ORDERED By The Zoning Commissioner of Baltimore County, this 2 day

of Jan, 1990, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 15 day of Jan, 1990, at 2 o'clock

P.M.

J. Robert Haines

Zoning Commissioner of Baltimore County

Tracking System

Baltimore County
Zoning Commissioner
Office of Planning & Zoning

Date Receipt FEE
Day Month Year Number TYPE Identification Number
06/01/87 07/14/86 0101-615 515-21221

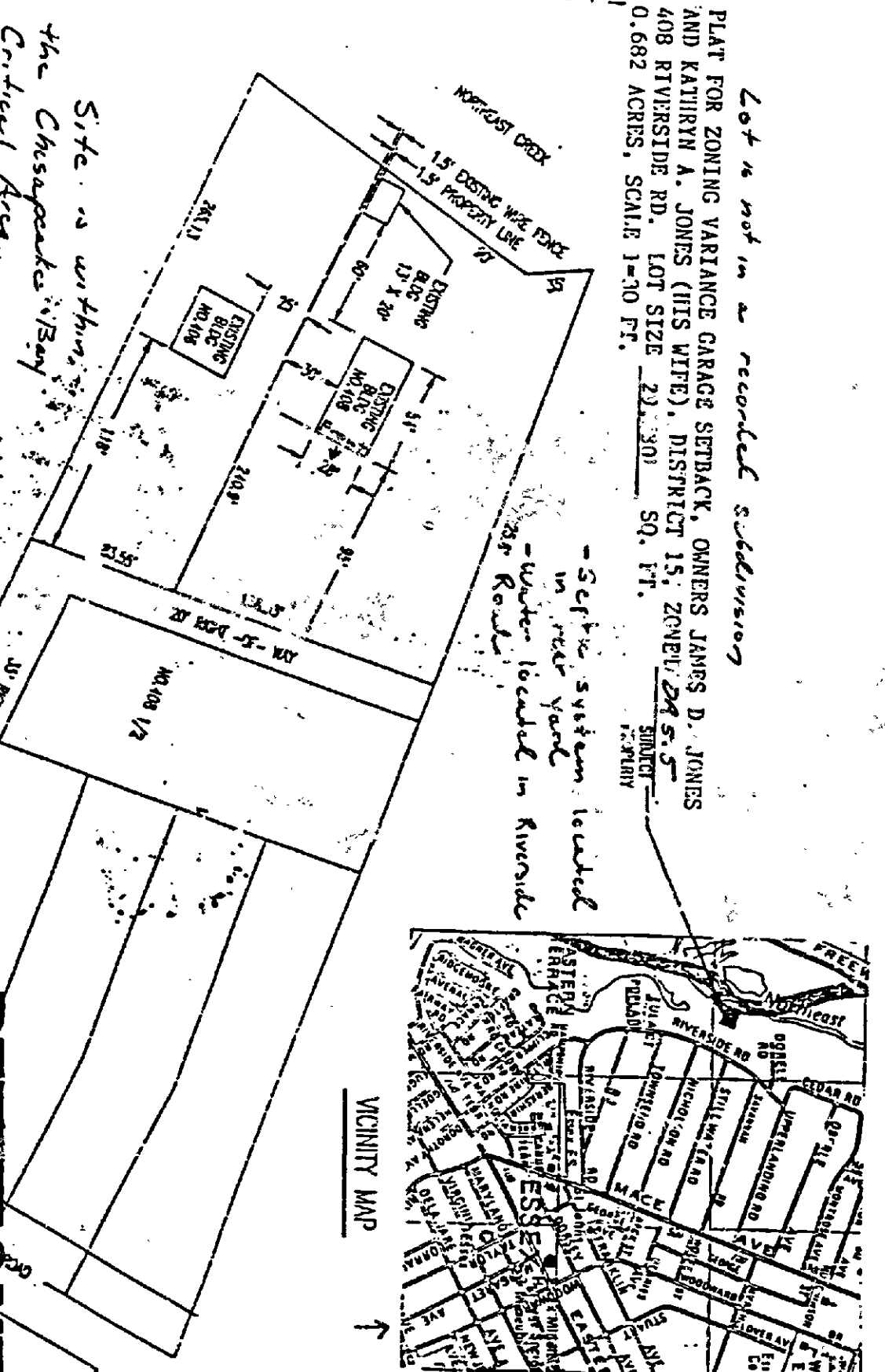
Petitioner: Jones
(Last) (First) (Middle Initial)
Property Address: 408 Riverside Road (Critical Area)
(Number) (Street)

OFFICE OF PLANNING & ZONING
BALTIMORE COUNTY, MARYLAND
MISCELLANEOUS CASH RECEIPT
No. 077476
DATE 1-1-90
AMOUNT \$ 35.00
PAID TO JAMES D. JONES - CRITICAL AREA
FROM BALTIMORE COUNTY (Item # 30)

ZONING DESCRIPTION

BEGINNING on the western side of the right of way that extends 290 feet northwesterly from the centerline of Riverside Road. Said centerline being 250 feet southeast of Stillwater Road. Fronting the western side of said right of way 138.33 feet. Containing 0.682 acres of land. Being known as 408 Riverside Road in the 15th Election District.

PETITIONER'S
EXHIBIT 1



CRITICAL AREA

#89
90-238-A

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

December 6, 1989

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204

000

Michael E. Brown, Esquire
4313 Edro Avenue
Baltimore, MD 21236

RE: am No. 89, Case No. 90-238-A
Petitioner: James D. Jones, et ux
Petition for Zoning Variance

Dear Mr. Brown:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

IT WOULD BE APPRECIATED IF YOU WOULD RETURN YOUR WRITTEN COMMENTS TO MY OFFICE, ATTENTION JULIE WINIARSKI. IF YOU HAVE ANY QUESTIONS REGARDING THIS, PLEASE CONTACT HER AT 887-3391.

Very truly yours,

James E. Dyer
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:jw

Enclosures

cc: Mr. & Mrs. James D. Jones
408 Riverside Road
Baltimore, MD 21221

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner



Dennis F. Rasmussen
County Executive

Your petition has been received and accepted for filing this
2nd day of October, 1989.

J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER

Received By:

James E. Dyer
Chairman
Zoning Plans Advisory Committee

Petitioner: James D. Jones, et ux

Petitioner's Attorney: Michael E. Brown

BALTIMORE COUNTY, MARYLAND INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines
Zoning Commissioner
DATE: December 5, 1989
FROM: Pat Keller, Deputy Director
Office of Planning and Zoning
James D. Jones, Item 89
SUBJECT: Zoning Petition No. 90-238

The Petitioner requests a variance to permit a 1 ft. side yard setback in the waterfront yard for an accessory building in lieu of the required 2 1/2 ft. rear yard.

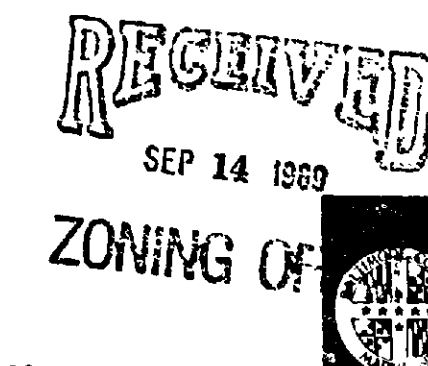
In reference to this request, staff offers no comment.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3211.

PK/JL/cmm

DEC 05 1989

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
County Office Building
Towson, Maryland 21204
(301) 887-3354



September 12, 1989

Dennis F. Rasmussen
County Executive

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, MD 21204

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 83, 84, 85, 86, 88, 89, 90, 92, and 93.

Very truly yours,

Michael S. Flanagan
Michael S. Flanagan

MSF/efm

SEP 10 1989

BALTIMORE COUNTY, MARYLAND INTER-OFFICE CORRESPONDENCE

TO: Mr. J. Robert Haines
Zoning Commissioner
DATE: November 27, 1989
FROM: Mr. Robert W. Sheesley
SUBJECT: Petition for Zoning Variance - Item 89
Jones Property
Chesapeake Bay Critical Area Findings

SITE LOCATION

The subject property is located at 408 Riverside Road along Northeast Creek. The site is within the Chesapeake Bay Critical Area and is classified as an Intensely Developed Area (IDA).

APPLICANT'S NAME Mr. and Mrs. Jones

APPLICANT PROPOSAL

The applicant has requested a variance from section 400.1 of the Baltimore County Zoning Regulations to permit a 1 foot side yard setback in the waterfront yard for an accessory building in lieu of the minimum 2.5 and rear yard, respectively.

GOALS OF THE CHESAPEAKE BAY CRITICAL AREA PROGRAM

In accordance with the Chesapeake Bay Critical Area Program, all project approvals shall be based on a finding which assures that proposed projects are consistent with the following goals of the Critical Area Law:

1. "Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands;
2. Conserve fish, wildlife and plant habitat; and
3. Establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts."

<COMAR 14.15.10.01.0>

Called 11/27/89 to JPL late
Comments.

Memo to Mr. J. Robert Haines
November 27, 1989
Page 2

REGULATION AND FINDING

1. Regulation Grandfathering

"After program approval, local jurisdictions shall permit the continuation, but not necessarily the intensification or expansion, of any use in existence on the date of program approval, unless the use has abandoned for more than one year or is otherwise restricted by existing local ordinances. If any existing use does not conform with the provisions of a local program, its intensification or expansion may be permitted only in accordance with the variance procedures outlined in COMAR 14.15.11" <COMAR 14.15.07.A>.

Finding This zoning variance request was initiated in order to correct an on-going setback violation dating prior to 1979. According to the above regulation, any use in existence prior to the date of program approval, February 1989, is permitted. Therefore, this request does not require a Chesapeake Bay Critical Area Findings.

CONCLUSION

A Critical Area Findings is not required for this petition. If there are any questions, please contact Mr. David Flowers at 887-2904.

Robert W. Sheesley
Robert W. Sheesley, Director
Department of Environmental Protection
and Resource Management

RWS:KRM:jw

cc: The Honorable Ronald B. Pickernell
The Honorable Norman S. Lauenstein
The Honorable Dale T. Volz
Mrs. Janice B. Outen

Baltimore County
Fire Department
800 York Road
Towson, Maryland 21204-2536
(301) 887-4500

Paul H. Reincke
Chief

September 14, 1989



Dennis F. Rasmussen
County Executive

J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

RE: Property Owner: JAMES D. JONES
Location: W/S OF R/W LOCATED AT NW/S OF RIVER-SIDE ROAD
Item No.: 89 Zoning Agenda: AUGUST 19, 1989
Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: *Pat Keller* 9-14-89 Noted and Approved *Pat Keller*
Planning Group Fire Prevention Bureau
Special Inspection Division

JK/KEK

SEP 05 1989

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

January 12, 1990



Dennis F. Rasmussen
County Executive

Mr. Arthur C. Enrick, Jr.
408 1/2 Riverside Road
Baltimore, Maryland 21221

RE: Petition for Zoning Variance
NW/S of Riverside Road, 270' SW of the c/l of Stillwater Road
(408 Riverside Road)
15th Election District - 5th Councilmanic District
James D. Jones, et ux - Case No. 90-238-A
Case No. 90-238-A

Dear Mr. Enrick:

In response to your letter dated January 11, 1990 concerning the above-captioned matter, the following comments are offered.

Thank you for pointing out the discrepancies you found in the Order issued January 4, 1990 for the subject property. While your statements may be accurate, they do not impact my decision to grant the relief requested, subject, of course, to restrictions. Your letter, however, will be placed in the case file and made a part of the record.

In the event you remain dissatisfied with the decision rendered in this matter, you have the right to file an appeal to the County Board of Appeals, provided you do so within thirty (30) days of the date of the Order, which in this instance, is January 4, 1990.

Again, thank you for bringing your concerns to my attention.

Very truly yours,

Ann M. Nastaronicz
ANN M. NASTARONICZ
Deputy Zoning Commissioner
for Baltimore County

AMN:bjb
cc: Case File

NAME	ADDRESS
Linda Emrick	408 1/2 Riverside Rd. 2137
Linda Emrick	400 1/2 RIVERSIDE ROAD
Mary m arjes	408 Riverside Road
Black maida	406 RIVERSIDE RD.